

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2005-188-C - ORDER NO. 2005-383

JULY 20, 2005

IN RE: Petition of MCImetro Access Transmission)	ORDER DENYING AND
Services, LLC for Arbitration of Certain)	DISMISSING PETITION
Terms and Conditions of Proposed)	TO INTERVENE
Agreement with Horry Telephone)	
Cooperative, Incorporated Concerning)	
Interconnection and Resale under the)	
Telecommunications Act of 1996.)	

This matter comes before the Public Service Commission of South Carolina (the Commission) on a letter from Horry Telephone Cooperative, Inc. (Horry or the Co-op) in opposition to a Petition to Intervene in this Docket filed by Time Warner Cable Information Services, LLC (TWCIS or Time Warner). Horry requests that the Commission deny TWCIS' request to intervene in this docketed arbitration proceeding between MCImetro Access Transmission Services, LLC (MCI) and Horry. The Petition to Intervene is denied and dismissed, pursuant to the discussion and reasoning below.

The Co-op notes that arbitration proceedings filed pursuant to Section 252 of the Telecommunications Act of 1996 (the Act) are not like the typical contested cases that the Commission presides over pursuant to the South Carolina Administrative Procedures Act (the APA). Instead, arbitration proceedings are a method used by two parties who have been unable to come to an agreement through negotiation. Arbitration proceedings are conducted by the Commission to assist the parties in resolving the differences they have identified through the negotiation process in order to reach a final agreement

between the parties. In other words, according to Horry, they are the culmination of the negotiation process contemplated under Sections 251 and 252 of the Act. Arbitration proceedings relate to a particular agreement and to the particular parties to that agreement. The Co-op states the belief that the fact that a third party may be interested in the issues or as TWCIS asserts, be interested in the final agreement itself, does not mean that those third parties should be permitted to participate in an arbitration proceeding. The negotiation process has taken place without Time Warner's involvement and, according to Horry, it would not be appropriate to interject TWCIS in the middle of the process now.

Further, Horry points out that the Commission has previously denied a Petition to Intervene filed by TWCIS in a recent similar proceeding involving arbitration between MCI and Farmers Telephone Cooperative, Inc., Home Telephone, Inc., PBT Telcom, Inc., and Hargray Telephone Company. See Commission Order No. 2005-233 in Docket No. 2005-67-C. The Petition to Intervene filed by TWCIS in that docket raised the same arguments that TWCIS raises here, according to Horry. The Co-op points out that this Commission correctly found that TWCIS is not a proper party of record to a proceeding for arbitration of an agreement to which TWCIS is not a party. As in the prior arbitration, according to Horry, TWCIS' status in the instant proceeding is that of a mere potential future customer of MCI in Horry's service area. While TWCIS asserts that its intervention is "necessary to protect its interests in this matter," it is not a party to the agreement between MCI and Horry. Horry points out that if the Commission were to grant TWCIS' intervention in this matter, any customer or potential customer of any carrier that is the subject of a future arbitration proceeding could argue that it likewise

has an interest in the outcome of that proceeding. The Co-op notes that the Commission has recently recognized that the purpose of an arbitration proceeding is to resolve specific disputed issues between two parties to an agreement, not to provide a public forum for the discussion of those issues.

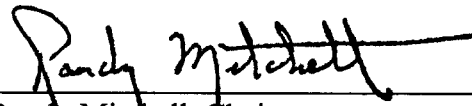
TWCIS, of course, takes a different view of the matter. The Company states, among other things, that TWCIS' legal rights will be directly affected by the decisions made during this proceeding, and that the decisions will directly impact TWCIS' provisioning of services to its customers in Horry's service area. Accordingly, TWCIS argues that the Administrative Procedures Act and fundamental issues of due process require that TWCIS be permitted to participate when issues are being decided that impact it so directly.

TWCIS states that it has a special interest in this proceeding, in that it has an established agreement with MCI which will be directly affected by the decisions made. TWCIS also lists its positions with regard to unresolved issues which it claims will directly impact it. We understand the arguments proffered by TWCIS, but we agree with the position taken by Horry. The Petition to Intervene filed by TWCIS must be denied and dismissed.

Clearly, TWCIS is not a party to the agreement to be arbitrated, and has therefore not been a participant in the negotiation process contemplated by Sections 251 and 252 of the Telecommunications Act of 1996. Arbitration proceedings, pursuant to the Telecommunications Act of 1996 are not like the typical contested cases that the Commission presides over pursuant to the APA. We agree with Horry that arbitration proceedings are a method used by two parties who have been unable to come to an

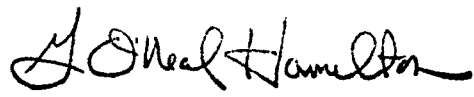
agreement through negotiation. An arbitration proceeding is clearly the culmination of the negotiation process contemplated under Sections 251 and 252. Arbitration proceedings relate to a particular agreement and to the particular parties to that agreement. We disagree with TWCIS that its particular interest gives it the right to intervene as a party of record in this case. Accordingly, the Petition to Intervene is denied and dismissed. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Randy Mitchell, Chairman

ATTEST:



G. O'Neal Hamilton, Vice-Chairman

(SEAL)